House
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Conference Summary

July 20, 1999 Conference Summary #106-4

J.C. Watts, Jr.
Chairman
4th District, Oklahoma

Y2K Readiness and Responsibility Act

H.R. 775

Committee on the Judiciary
H.Rept. 106-212

Legislative History:

The House passed H.R. 775 by a vote of 236-190 on May 12, 1999. The Senate passed its version (S. 96) by a vote of 62-37 on June 15, 1999. On July 1, 1999, the House adopted the conference report by a vote of 404-24 and the Senate adopted it by a vote of 81-18. President Clinton signed the bill into law (*P.L. 106-37*) on July 20, 1999.

Summary:

H.R. 775 curbs the costs of litigation associated with the year 2000 (Y2K) computer problem, which many experts predict may cause scores of computer systems to fail at midnight, January 1, 2000. The Y2K glitch is born of decades-old computer programming that recognizes calendar years by their last two digits—a memory space-saving technique whose consequences were unforeseen. The extent of any damage this problem may cause is, for the most part, unknown. However, more than 80 Y2K lawsuits already have been filed; 790 demand letters for new Y2K suits (sent prior to filing) have been issued as well. Against this backdrop, the measure is intended to steer resources into *fixing* the Y2K problem rather than allow litigants to exploit it. Major provisions in the bill include the following:

Definition of a Y2K Action

The bill modifies the definition of a Y2K action to clarify that actual as well as potential Y2K failures are covered by the measure; the actual or potential failures have to occur by January 1, 2003. The bill includes this provision to ensure that cases involving questions such as determining liability to shareholders or responsibility for the costs of correcting the Y2K problem—even when there is no actual Y2K failure—are within the scope of the legislation.

Pre-Litigation Procedures

The measure requires potential plaintiffs, before filing a Y2K action, to give 30 days written notice of (1) any symptoms of a material defect alleged to have caused injury; (2) the injury allegedly suffered; (3) the facts that led the potential plaintiff to hold the person or entity responsible for both the defect and the injury; and (4) the relief or action sought. The potential defendant will then have 60 days to fix the problem. No lawsuit may filed until 90 days after the date the written notice is given.

The measure allows either party, at any time during the 90-day period, to request that the other party use alternative dispute resolution—where binding decisions are made outside the traditional court system. To recover damages, plaintiffs must have taken steps to avoid or fix Y2K problems of which they should reasonably have been aware. The bill permits defendants to introduce evidence of their "good faith" efforts to fix the Y2K problem.

Limited Grace Period for Mortgage Payments

The measure prohibits financial institutions from foreclosing on residential mortgages if the home-owner defaulted on his or her mortgage payment because of a Y2K failure that occurred between December 16, 1999, and March 15, 2000.

Regulatory Relief

The bill allows facilities that, because of a Y2K failure, were in temporary noncompliance with federal regulations (e.g., environmental) regarding measurement, reporting, or monitoring to waive federal penalties—provided that the facility did not otherwise violate the underlying regulation and the temporary violation did not cause imminent or actual harm to public health, safety, or the environment.

Proportional Liability

Under the bill, defendants may be held liable only for the proportion of the judgment that corresponds to the percentage of actual fault—e.g., a defendant may be required to pay for 25 percent of damages if he is found to be 25 percent at fault. However, the measure includes four instances in which the defendant will not be held proportionately liable, but instead held joint and severally liable (i.e., responsible for a percentage of damages beyond what the defendant actually caused).

Specifically, these four exceptions apply in cases where: (1) the defendant acted with specific intent to injure the plaintiff or knowingly committed fraud; (2) a share of the damages is uncollectible (e.g., a co-defendant is bankrupt and cannot pay his share), in which case the defendant may be held liable for twice the amount for which he is responsible, as well as an additional 50 percent of the defendant's base proportion if he acted with reckless disregard; (3) a share of the damages are uncollectible and the plaintiff's net worth is less than $200,000, or the damages the plaintiff seeks amount to more than 10 percent of his net worth; and (4) a share of the damages is uncollectible and the plaintiff is a "consumer"—i.e., an individual who did not intend to resell the product he bought—bringing an individual suit (as opposed to a class action). The bill stipulates that these provisions do not preempt state laws that limit a defendant's liability or protect him from joint and several liability.

Limitation on Punitive Damages

H.R. 775 establishes a $250,000 limit (or three times actual damages, whichever is less) on punitive damages awarded in Y2K lawsuits, in addition to 100 percent recovery of any losses incurred, for businesses with 50 or fewer employees.

Class Actions

The measure stipulates that a class action worth less than $10 million or with fewer than 100 plaintiffs must be remanded to state court. If the plaintiff seeks punitive damages, then the action may be heard in federal court.

Duty to Mitigate

The bill stipulates that if plaintiffs rely on a defendant's fraudulent representation about the Y2K readiness of a product as the basis for a lawsuit, then those plaintiffs may be relieved of their affirmative duty to mitigate—i.e., take steps to avoid Y2K damage based on information disclosed by the defendant.

Economic Loss

The measure mandates that a plaintiff who suffers economic damages may sue under tort law only if the defendant intentionally committed an act, such as fraud, that was extraneous to the underlying contract.

Background:

The year 2000 computer problem arises from the fact that chips and software have been coded to mark the years with only two digits, so that when the date on computers turns over to the year 2000, the computers' will register 1900 instead. Although between $800 and $900 billion already has been spent to correct the Y2K problem, roughly 50 percent of the country's small- and medium-size businesses are not Y2K compliant. This failure is of particular concern to the health sector, where many hospitals and 90 percent of doctors' offices are largely unprepared.

If hospitals, supermarkets, utilities, and small businesses are forced to shut down because of computer problems, a flurry of lawsuits against computer and software manufacturers will almost certainly result. Some experts estimate that liabilities could reach $1.4 trillion. Over 80 Y2K lawsuits already have been filed, with 790 demand letters for new Y2K suits (sent prior to filing) issued. Although no damages have occurred yet, entities such as Source Data Systems, an Iowa-based company, are being sued for selling systems that allegedly are not Y2K compliant.

Other Information:

For information on the bill as it was debated in the House, see *Legislative Digest*, Vol. XXVIII, #13, May 7, 1999.

Scott Galupo, 226-2305

Brian Fortune: *Managing Editor*

Kevin Smith: *Senior Legislative Analyst*

Mary Rose Baker, Scott Galupo,
Brendan Shields, & Heather Valentine:
Legislative Analysts

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